



**PEOPLE FOR  
THE AMERICAN WAY**

*Your Voice Against Intolerance*

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**MAY -- 8 1997**

Federal Communications Commission  
Office of Secretary

By Hand-delivery

May 8, 1997

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: In the Matter of Industry Proposal for Rating Video Programming -  
CS Docket No. 97-55

To Whom It May Concern:

Enclosed for filing please find an original plus nine copies of the "Reply Comments of People For the American Way" in the above-captioned matter.

Thank you for your consideration.

Sincerely,

*Lawrence S. Ottinger*

Lawrence S. Ottinger  
Senior Staff Attorney

Encl.

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
Industry Proposal for Rating Video Programming )

CS Docket No. 97-55

**REPLY COMMENTS OF PEOPLE FOR THE AMERICAN WAY**

People For the American Way files this reply to respond to those comments which go beyond providing input and criticism concerning the industry's voluntary television ratings system to call for the imposition of a government-mandated ratings system for video programming. People For the American Way ("People For") is a national, non-partisan citizens organization with over 300,000 members across the country committed to promoting and defending our nation's fundamental First Amendment values and freedoms. For both legal and policy reasons, we strongly oppose the FCC developing and imposing a ratings system on video programming based on "violent" or "sexual" content.<sup>1</sup> Instead, we support the use of methods to empower parents to tailor their children's access to TV and cable programming according to their family's own values and needs. Moreover, the government, media, communities, and parents should continue to work together on public education campaigns, including in the media, that promote anti-violent behavior and conflict resolution, and should not expend their time and effort on promoting misguided government-mandated ratings.

The problem of violence permeates American society, and we all share responsibility for seeking solutions. But coercive state-sponsored restrictions on the content of video

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<sup>1</sup> See Section 551 of the Telecommunications Act of 1996. While these comments focus on "violent" content, we are similarly concerned with government imposed restrictions on "sexual" content which could improperly chill valuable video programming ranging from health education on topics such as AIDS, breast cancer, or prevention of teen pregnancies, to classical works of art, to political discussion of these and other issues of the day.

programming would not address the larger problem of violence in America while severely harming our First Amendment freedoms. The recent attack by Representative Tom Coburn against NBC for airing "Schindler's List," one of the most acclaimed films of this decade in its depiction and criticism of the horrors of the Holocaust, only underscores why the government should stay out of the business of making content decisions about video programming. We do not promote respect for the law and the rights of others by doing violence to the First Amendment values and freedoms shared by us all.

A government-mandated rating system for "violent" TV programming would violate First Amendment principles and almost certainly embroil the government in costly and divisive litigation. Content-based government restrictions on speech are subjected to the highest constitutional scrutiny. In Brandenburg v. Ohio, the Supreme Court made clear that even speech that advocates violence -- much less speech that merely depicts it -- is protected by the First Amendment and may only be restricted if it "is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." 395 U.S. 444, 447 (1969). Video programming almost never advocates violence, and certainly is not aimed at inciting nor likely to incite imminent lawless action.

Supporters of an FCC mandated rating system advocate a content-based system that would be backed by FCC sanctions, including revocation of license,<sup>2</sup> and go far beyond the narrow limits set by the Supreme Court in Brandenburg v. Ohio. Because of the inherent

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<sup>2</sup> See, e.g., Comments of Morality in Media, Inc. at 9-13.

vagueness of the term “violence” and similar terms<sup>3</sup>, the threat of FCC sanctions, and the economic impact of having valuable programs automatically and indiscriminately blocked through narrow, one size fits all type “V” ratings, mandatory carriage of a government rating system would impermissibly chill much constitutionally protected and valuable programming. As a result, a vast amount of protected and socially valuable programming could receive “V” ratings, and be chilled from being produced or from being aired during certain times of the day or at all. Such programming could include widely acclaimed movies or series with war scenes like “Glory” or “The Civil War”; documentaries or fictionalized films about slavery, the civil rights movement, or the death penalty; slapstick “violence” in comedies such as Shakespeare’s A Comedy of Errors or “The Three Stooges”; news accounts of local crime or civil wars in Bosnia or Zaire; animated cartoons like “Popeye” or “Tom and Jerry”; professional sports such as hockey or football; or documentaries or fictionalized films that depict domestic violence or gang violence in order to promote anti-violence messages or policy solutions. Because it could chill such a vast amount of protected expression, a government mandated TV violence ratings would violate constitutional standards with respect to vagueness and overbreadth. See Grayned v. City of Rockford, 408 U.S. 104 (1972); Interstate Circuit, Inc. v. City of Dallas, 390 U.S. 676 (1968).

Indeed, the example of news and sports programming illustrates the obvious vagueness and overbreadth problems that would attend any government ratings system with respect to TV violence. A vast majority of the public clearly would not want news or sports programming to

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<sup>3</sup> The courts have struck down as unconstitutionally vague statutory language restricting violent content. See, e.g., Winters v. New York, 333 U.S. 507 (1948) (state law prohibiting news stories of “bloodshed and lust massed so as to incite violent or depraved crimes”); Video Software Dealers Association v. Webster, 968 F.2d 684 (8th Cir. 1992) (state law restricting videocassettes which “cater or appeal to morbid interests in violence”).

be automatically blocked along with other “V” rated programming, and would be right in considering unrestricted news coverage as central to First Amendment freedoms. While the industry has exempted news and sports programming and can do so quite legally and appropriately as a private actor, the government would not be able to justify similar exemptions under heightened First Amendment scrutiny. There is simply no basis for concluding that the violence that is part of news coverage of local crime or of professional sports such as football and hockey would have any less effect on young viewers than depictions of violence in movies or other programming. Yet the severe problems with such government ratings of news and sports programs are clear.

Moreover, as the Supreme Court has made clear, the “evils” of vagueness, as with overbreadth, “are not rendered less objectionable because the regulation of expression is one of classification rather than direct suppression.” Interstate Circuit, Inc. v. City of Dallas, 390 U.S. 676, 688-689 (1968). Thus, as the courts have held, government mandated labeling or ratings of expressive material which have the purpose and effect of chilling expression violate the First Amendment. See Interstate Circuit, Inc. v. City of Dallas, 390 U.S. 676 (1968) (striking down municipal classification system of movies as suitable or unsuitable for young persons); Bantam Books v. Sullivan, 372 U.S. 58 (1963) (invalidating a government blacklist of “objectionable” publications that might have harmful effects on children); National Association of Theatre Owners v. Motion Picture Commission of Milwaukee, 328 F. Supp. 6 (E.D. Wis. 1971) (invalidating state law mandating that movies carry a government rating indicating their suitability for younger audiences).

As a policy matter, no governmental rating system can ever reflect the diverse values and opinions of American families with respect to the thousands of hours of programming that appear on television each day. Parents and families, not “big brother” government, should decide, with the advice and support of citizens organizations and others that they trust, what video programming is appropriate for their children and family. Cable lockboxes already have proved effective in permitting parents to control cable television programs that their children watch. In addition, new technologies are coming to market that will enable parents to tailor their video programming with the assistance of private guidance systems developed by citizen organizations across the political and ideological spectrum. Thus, private groups such as the National Coalition on TV Violence and the Center for Media Education have issued private ratings or report cards with more detailed information on violence and other content contained in TV programs. Not only will a diversity of private guidance systems permit parents to tailor their programming to their own values and needs, but it will also develop channels of communication between station executives and citizen groups in order to make local programming more accountable to community needs. Government can promote access to such means to promote family empowerment with respect to video programming.

In addition, instead of focusing time and money on increasing degrees of governmental censorship of video programming, the government should work together with the media, community groups, parents, educators and others to continue to enlarge and expand successful initiatives that promote anti-violence education, such as public service announcements, documentaries and other video programming. Such initiatives educate the public about the dangers and root causes of violence and promote anti-violence messages along with discussions

of broader solutions to address societal violence. Focusing on these non-censorship approaches to curbing violence preserves our country's First Amendment freedoms, promotes true parental empowerment, reflects community and democratic values, and fosters a respect for the law and the rights of others.

Respectfully submitted,

A handwritten signature in cursive script, reading "Lawrence S. Ottinger". The signature is written in dark ink and is positioned above the printed name and address.

Elliot M. Minberg  
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